IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR JUSTICE ANTONY DOMINIC

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

RCRev..No. 69 OF 2007()

RCA.16/2005 OF II ADDL.DISTRICT COURT,ERNAKULAM
RCP.39/2003 OF ADDL.MUNSIFF COURT,KOCHI

REVN.PETITIONERS:(RESPONDENTS/COUNTER PETITIONERS)

1. JUDE, S/O. XAVIER,
2/403, PADINJATTUMURI, KUMBALANGI VILLAGE,
KOCHI-7.

2. JOSEPH, S/O. CHACKO,
CHOORAKKULATH, 2/404, KUMBALANGI VILLAGE,
KOCHI-7.

3. SUNNY, S/O. JOSEPH,
PANAKKAL, 2/405, KUMBALANGI VILLAGE, KOCHI-7.

4. XAVIER, S/O. THOMMAN,
CHITTATTUTHARA, 2/407, (WRONGLY SHOWN AS 2/405
IN THE IMPUGNED JUDGMENT), KUMBALANGI VILLAGE,
KOCHI TALUK.

BY ADV. SRI.SUMAN CHAKRAVARTHY
SRI.M.R.RAJESH
SMT.A.K.PREETHA
SRI.BINDIYA JOSE

RESPONDENTS: (APPELLANT/PETITIONER)

FATHIMA, W/O. XAVIER,
PANANJIKKAL HOUSE, THOPPUMPADY VILLAGE &
D/O. BAPPUKUTTY (LATE), CHAKKIYAMURI,
KUMBALANGHI VILLAGE, KOCHI TALUK.

BY ADV. SRI.JOSEPH FRANKLIN

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 5.3.2007, THE COURT ON 27/07/2007, PASSED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

R.C.R. NO. 69 OF 2007

DATED THIS, THE 27TH DAY OF JULY, 2007.

O R D E R

Raman, J.

Revision petitioners are tenants who are faced an order of eviction passed under Section 11(4)(iv) of the Kerala Buildings (Lease & Rent Control) Act (hereinafter referred to as 'the Act') in a proceeding instituted by the respondent/landlady. The petition was dismissed by the Rent Control Court; but in appeal, the Appellate Authority reversed the finding of the Rent Control Court, allowed the petition and ordered eviction against which this revision petition is preferred.

2. The landlady sought eviction under Section 11(4) (iv) of the Act on the ground of bona fide need for reconstruction of the building subject to the right of the tenants to be re-inducted after reconstruction as envisaged in the Rent Control Act. The petition schedule building belongs the to the respondent herein as per a partition deed of the year 1987. Revision petitioners 1 to 3 were paying Rs. 30 per mensum as rent for the rooms occupied by them and the 4th petitioner was paying Rs. 50/- towards monthly rent.

3. The landlady alleged that the revision petitioners committed default in paying the rent for two years, that the building is situated in Kumbalangi Junction where there are several important institutions like Church, Bank, Market etc. and the locality is fast developing, that she is not able to maintain the building with the paltry sum received from the tenants towards rent, that the condition of the building is bad, that mere repair of the building may not be sufficient to sustain the building for long, that cracks have developed in the main wall, that the development in the locality requires the building to be demolished and reconstructed, that the building is forty years old and it is an old fashioned building with tiled roof and constructed with miscellaneous work, that she has also settled near the building, and she undertook to handover the building to the tenants after reconstruction.

4. The tenants (revision petitioners herein) in their counter affidavit contended that the averment that the rent paid by all of them except one is at the rate of Rs. 30/- p.m. is false and that the first and third petitioners herein are paying a monthly rent of Rs. 100/-, the second petitioner at the rate of Rs. 125 p.m. and the fourth petitioner at Rs. 100/-. They also denied the allegation that the building is old and dilapidated and according to them, it is a strong building. They denied that the building is situated in an

important locality; but admitted that several buildings have been constructed around the petition schedule premises which according to them are remaining vacant because of the non availability of tenants. According to them, the building in question is situated in a grama panchayat. They denied that it is an old fashion building and according to them, they are eking their livelihood by doing different businesses in the petition schedule rooms occupied by them.

5. The evidence in the case consists of the testimony of P.Ws 1 and 2 and Exts. A1 to A4 and Ext.C1 and C1(a) on the side of the landlady. RWs 1 to RW4 were examined on the side of the tenants; but no documents were produced.

6. Since eviction is sought for on the ground of reconstruction, arrears of rent as alleged has no relevancy. The question whether the petition schedule building is in such a condition that it needs reconstruction and whether the landlady requires the building bona fide to reconstruct the same was considered by the Rent Control Court. In that regard, the court also considered whether the landlady has obtained necessary plan and licence for reconstruction of the building and whether she is able to reconstruct the same. The evidence tendered by PW.1 regarding the dilapidated condition of the building was not accepted by the Rent Control

Court. It also placed reliance on Ext.C1 Commission Report wherein it is reported that the building is in a good condition and it is strong. The Commissioner was examined as PW.2. In the above circumstances, the Rent Control Court found that there is no reliable materials on record to show that the building is in a dilapidated condition which requires reconstruction. The Rent Control court referred to the deposition of PW.1, who has stated that the building in question is situated in front of her tarwad house (family house) and it is not suitable for their status. Further, if reconstructed, it will fetch a higher rent and a beautiful building will come in front of her house. Relying on the above deposition, the Rent Control Court held that the bona fide need is not to reconstruct the building for strengthening it. But the landlady produced the plan and licence from the Grama Panchayat for reconstruction of the building and proved by Exts.A1 to A4. It was held that there was no dispute regarding the financial capacity of the landlady for reconstruction of the building. The other evidence consists of Exts.A2 series and A3 series which would show that the newly constructed building in the locality are concrete buildings. But according to the Rent Control Court, the landlady was not successful in proving that the building needs reconstruction and in such circumstances, the Rent Control Petition was dismissed. On appeal by the landlady, the

Appellate court found in paragraphs 12 and 13 as follows:

> "Coming to the case in hand, it is noted that the building was taken on lease by the 1st respondent more than 30 years ago, necessarily the building must be more than 30 years old. The landlady says that it is more than 40 years old. There is no evidence regarding the dilapidated condition of the building but the Commissioner has also opined that the building is old. The financial capacity of the landlord is not suspected. She was abroad with her husband and admittedly has lots of money to reconstruct the building. The building is situated in Kumbalangi Grama Panchayath. Within 100 ft.. from the petition schedule building, there are other concrete buildings and new fashioned buildings have come up. Admittedly, the petition schedule building has a tiled roof and is old fashioned. The area where the building is situated is developing. It is pointed out that Kumbalangi Grama Panchayat is declared as a tourist village attracting a lot of tourists. It is true that there is no opinion that the building is in the verge of collapse. Probably it may be strong enough to hold good for a number of years. But that alone is not the criteria for eviction U/s. 11(4)(iv). The learned Munsiff Rent Controll Court has taken exception to certain portions of the cross-examination of PW1 where she has stated that the concept and idea of reconstructing the building is that of her husband's and that the existence of such an old building in front of their house is bad and that it is a prestige issue for her to reconstruct the building. She has also stated that on reconstructing the building, she could get more income by way of rent and an impressive structure would come up in front of her house which is more presentable.
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> 13. I do not find any reason why the learned Munsiff should have taken exception to the aforesaid deposition of the petitioner. He has suspected the bona fide of the petitioner for which there is no reason because she has only expressed her wish and desire to have more presentable and good looking building in front of her house and has taken

> that as a prestige issue because she does not want an old and dilapidated structure to stand in front of her house. her desire to have a new fashioned impressive structure could be found fault with. She also aspires to get more income by way of rent, once the building is reconstructed. Such desire is not something which would question her bona fides. In fact, it would only expressed her desire to get a new building constructed at the earliest. So that she could have an impressive structure in front of her house. She could also make more profitable use of the structure. the fact that she is getting only paltry rent for the building is not in dispute. Whether it is Rs. 30/- or Rs. 100/- as rent it does not make much difference. It is not enough to maintain the building. The tenants have admitted that they themselves carry out minor repairs. The Commissioner has not opined that the building is made with good and expensive wood. The floors are plain. A bank building is situated nearby and there are other new structures in the vicinity. therefore, it is the bona fide of the landlord to get the building reconstructed. Relying on the decision of his lordship Justice V.R. Krishna Iyer reported in 1970 KLT 257 (supra) the social purpose of this provision is to remove the road blocks in the way of progress in building programmes. Replacement and renewal of obsolescent and unsightly buildings to make room for larger, modern constructions is a social necessity. Under the circumstances, the learned Munsiff, Rent Control Court has gone wrong in interpreting the provision by declining to grant eviction on the ground of reconstruction. The finding therefore, needs to be reversed. Point No.1 is answered accordingly."

7. The short question that arises for consideration is as to whether on the evidence available on record, the finding of the Appellate Court that there is bona fide need for reconstruction, though the building may not be in

a dilapidated condition, is correct?

8. As per Section 11(4)(iv) of the Act, a landlord is entitled to seek eviction of the tenant if the landlord bona fide requires to reconstruct the same, provided, he satisfies the Court that he has the plan and licence, if any required, and the ability to rebuild and the proposal is not made as a pretext for eviction. This is however, subject to the right of the tenant to have the first option to have the reconstructed building allotted to him with liability to pay its fair rent, as provided under the third proviso thereunder. In this case, the court below has noticed that the landlady has undertaken to allot rooms after reconstruction to the tenants in accordance with the proviso. The court below has also found that it is beyond dispute that the landlady has the necessary plan and licence and the ability to reconstruct the building. What remains to be considered is whether the building is in such a condition that it needs reconstruction. On a plain reading of the provision, it can be seen that the need for reconstruction is not confined to a situation where the building requires reconstruction because of its dilapidated condition. In Kalliani v. Madhavi (1970 KLT 257) Krishna Iyer, J. (as he then was), after considering the provisions contained in Section 11(4), held that wider meaning is to be given to the expression "condition of the building" taking into account considerations of social surroundings. It was

further held that obviously the Controller must be satisfied about the reality of the claim made by the landlord and this can only be established by looking at all surrounding circumstances, such as the condition of the building, its situation, the possibility of it being put to a more profitable use after construction, the means of the landlord and so on. This intention must be honestly held in relation to the surrounding circumstances. If really the landlord is wanting to start a big trade on his own and for that purpose he is trying to get recovery of possession, it follows that he bona fide intends to reconstruct the present building. If eviction can be had only on the court being satisfied that the physical condition of the building is on the verge of collapse, there is no doubt that only few buildings could be evicted before they have actually collapsed. A wider and more realistic meaning must be given to the expression "condition of the building". The social purpose of this provision is to remove the blocks in the way of progress in building programmes. Replacement and renewal of obsolescent and unsightly buildings to made room for larger, modern constructions is a social necessity, provided existing tenants are not thrown into the streets. The "condition of the building" is a larger concept which includes considerations of social surroundings and allied factors. Where the building is very old and incongruous with the social setting and the

surroundings of the place, the Court has got to take a more liberal view in applying the provision of law."

9.That was a case where the building sought to be evicted was a thatched building and it was contended by the landlord that the building was 50 years old and was in such a condition that it needed reconstruction. An order of eviction was passed by the Rent Control Court which was challenged in the revision petition. The tenant/revision petitioner argued that the landlord has originally put forward the ground of bona fide need for his own occupation but finding that the tenant had been in the building long prior to 1940 he gave up that ground . The argument was that what the landlord failed to achieve on account of the embargo in Section 11(17) he is trying to accomplish through Section 11(4)(iv). Repelling the contentions, it was held that if really he is wanting to start a big trade on his own and for that purpose he is trying to get recovery of possession, it follows that he bona fide intends to reconstruct the building. Turning to the contention of the tenant that the building must be in such a condition that it needs reconstruction and this ingredient has to be made out apart from the landlord's bona fide intention to reconstruct and stress is upon the physical condition of the building, it was held that if eviction can ordered only on the court being satisfied that the physical condition of the building

is on the verge of collapse, there is no doubt that only few buildings could be evicted before they have actually collapsed. Reference was also made to the decision of the apex court in 1963 SC 499 while considering a similar statute wherein the apex court explained the conditions which are implied in the requirement of law in the following terms:

> "The controller has to be satisfied about the genuineness of the claim. To reach this conclusion obviously the controller must be satisfied about the reality of the claim made by the landlord, and this can only be established by looking at all surrounding circumstances, such as the condition of the building, its situation, the possibility of its being put to a more profitable use after construction, the means of the landlord and so on. It is not enough that the landlord comes forward, and says that he entertains a particular intention, however strongly, said to be entertained by him. The clause speaks not of the bona fides of the landlord, but says, on the other hand that the claim of the landlord that he requires the building for reconstruction and re-erection must be bona fide, that is to say, honest in the circumstances. It is impossible, therefore, to hold that the investigation by the controller should be confined only to the existence of an intention in the mind of the landlord to reconstruct. This intention must be honestly held in relation to the surrounding circumstances."

10. In **Church of South India Trust Association v. State of Kerala** (1972 KLT 303) there was a claim by the landlord for the building for his own occupation after reconstruction. This Court, in para 5 of the judgment held as follows:

> "It is for the landlord of the building to decide whether it needs reconstruction or whether he should have it for his purpose. It is his property; and he is the best judge on that matter. If a claim is made by the landlord for possession of the building on such a ground, the Accommodation Controller or Rent Controller, as the case may be, is not entitled to say that the landlord need not have it for reasons of his own. All that he is entitled to do is to enquire whether the need is bona fide or whether it is only a pretext not to lease out the building or to evict a tenant, as the case may be. The right to reconstruct a building or to have it for the landlord's own purposes is a very valid right attached to the property."

11. In **Balagangadhara Menon v. T.V. Peter** (1984 KLT 845), a Division Bench of this Court considered the scope of Section 11(4)(iv) of the Act and the factors to be considered thereunder. There, the petitioners sought eviction of the respective respondents who were tenants of two adjacent buildings, under Section 11(2)(b) and 11(4)(iv) of the Act on the ground of arrears of rent and for reconstruction. The Rent Control Court disallowed eviction on the ground of arrears of rent but upheld the latter ground under Section 11(4)(iv) and directed the respondents/ tenants to put the landlord in possession of the building. This was confirmed in appeal. But in a revision filed against the said order, the Revisional Authority reversed the orders dismissing the petition. The said decision was challenged before this Court in the civil revision petition. The tenant,

placing reliance on **Thanka v. Narayani** (`1981 KLT 502), contended for the position that under Section 11(4) of the Act the relevant factor is the condition of the building and that the nature of the locality and everything else is irrelevant. But the court did not accept the said contention and it was observed that the learned Judge who decided **Thanka v. Narayan**i (1981 KLT 502) did not rule out the social conditions or the conditions of the locality as irrelevant is clear from his Lordship's warning not to inflate these circumstances at the expense of the physical condition of the building and the further statement that they cannot be decisive in assessing the need to reconstruct the existing building." This is far from eliminating these factors out of consideration as sought to be made out by counsel for the tenants. Reference was also made to the decision of this Court in 1967 KLT 811 rendered by K.K. Mathew, J. (as he then was) following the decision reported in ILR 1964(1) Kerala 254, wherein it was held that the court can have regard to the area where the building is situated, the nature of the developments that are taking place in the area etc. Reference was also made to the decisions in 1970 KLT 257 and 1979 KLT 397 where similar views were taken by this Court. After referring to 1981 KLT 502, it was held that the said decision is silent about the earlier decisions and the court disagreed with the narrow view taken in the said decision.

12. In **Madhavan v. Leelamma** (1991(2) KLT 32) a Division Bench of this Court has considered as to whether eviction can be had only on the Court being satisfied that the physical condition of the building is on the verge of collapse. It was held that a 'wider and more realistic meaning must be given to the expression "condition of the building". The court can have regard to the area where the building is situated, the nature of the developments that are taking place in the area etc. The correct provision allowing re-induction of the tenant has got very significant and important role to construe the provisions contained in S.11(4)(iv) of the Act. As far as the provisions contained in the Kerala Act, there are sufficient safeguards for the tenant who has been evicted on the ground of reconstruction. "

13. That was a case where the building was situated in a more commercially important locality in Tripunithura Municipality. The case of the landlady was that the locality has improved very much, that there are modern building and the building in question is an old building and if the building is reconstructed, it will be economically profitable to her. The Rent Control court allowed the petition after holding that the landlady has established a case under Section 11(4)(iv) of the Act, which was confirmed by the Appellate Authority. It was challenging the orders of those authorities that the revision was preferred before this Court. Negativing the

contentions of the tenants, this Court reiterated the principle that for seeking eviction under Section 11(4)(iv) the court can have regard to the area where the building is situated, the development of the area etc. and cannot be constrained to the physical condition of the building alone.

14. In the light of the principles as laid down by various decisions as discussed above, there can hardly be any doubt that in order to establish a ground for eviction under Section 11(4)(iv) of the Act, what has to be established by the landlord is his bona fide requirement for reconstruction and the expression "condition of the building" cannot be confined to its physical condition; but the expression should be given a wider meaning and if the landlord seeks eviction for bona fide reconstruction of the building having due regard to the nature of the development that are taking place in the area where the building is situated, the possibility of the building being put to a more profitable use, the ability of the landlord for reconstruction and so on, that will satisfy the requirement under Section 11(4)(iv) of the Act. Where the building is very old and incongruous to the social settings and surroundings of the place, the court is bound to take a more liberal view in applying the provisions of law.

15. The court below has found that the building was taken on lease by the petitioners more than thirty years ago and necessarily, therefore the

age of the building is more than 30 years. The condition of the building, as reported by the Commissioner, also shows that it is old. The financial capacity of the landlady is not disputed. The building is situated in a junction in a grama panchayat and within 100 ft. from the petition schedule building, there are concrete buildings and modern buildings have also come up. Admittedly, the petition schedule building has a tiled roof. The area where the building is situated is developing. It was noticed that Kumbalangi Grama Panchayat is declared as a Tourist village attracting to a lot of tourists. It was found that the landlady aspires to get more income after reconstruction of the building. It was also found that the building question is in front of the building where the landlady resides. The landlady expressed her wish to have a more presentable modern building in front of her house. The present rent for the rooms is very meager. So that, after reconstruction of the building, she could make the building more profitable. It has come out in evidence that various institutions such as bank, church etc. are situated near the building in question. We have also noticed that the appellate court has made necessary safeguards by giving appropriate direction for reconstruction of the building within one year from the date of taking possession and that the tenants/revision petitioners are entitled to get a portion of the reconstructed building re-allotted to them for carrying out

their business.

In the above circumstances, the order passed by the court below does not suffer from any irregularity, illegality or impropriety warranting any interference under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965. The Revision petition is accordingly, dismissed.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-